

**Comments of the Western Power Trading Forum
on Revisions to the Electricity Entity Provisions
in the Mandatory Reporting Regulation**

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The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide comments to the California Air Resources Board (ARB) on its consideration of potential amendments to the Mandatory Reporting Regulation (MRR) for Greenhouse Gas Emissions. Our comments are directed at provisions related to reporting of emissions by electric power entities in the current version of the MRR, as well as potential changes identified and circulated by ARB staff on May 30th and June 19th.

An overview of WPTF's concerns is provided below, followed by detailed comments and recommendations for textual changes for definitions and operational provisions under section 95111 (Data Requirements and Calculation Methods for Electric Power Entities) to address these concerns.

General Comments

Asset-Controlling Suppliers

In changes proposed on May 30th, ARB modified provisions related to Asset-Controlling Suppliers (ACS) so that these apply broadly to electric power entities that own or operate electric generating facilities or serve as an exclusive marketer, rather than being applied solely to the Bonneville Power Administration (BPA). ARB also removed the automatic lower emission rate for BPA and instead required that any entity wishing to be designated as an ACS must apply ARB, and if the designation is approved, must then report annually and have its applicable emission rate calculated annually.

WPTF supports the proposed modifications to allow entities in addition to BPA to seek the ACS designation. WPTF understands that in order to claim an ACS specific emission rate, electricity importers must conform with all other requirements for specified imports, including direct delivery and execution of a specified contract. However, WPTF believes that additional modifications are necessary to various provisions throughout the MRR to clarify these ACS requirements.

Further, we are concerned that recalculation of each ACS emission rate on an annual basis will introduce an unnecessary level of uncertainty for importers of ACS-sourced power marketers with the ACS with respect to the applicable emission rate and thus the carbon liability associated with those imports. WPTF therefore recommends that ARB set the emission rate prospectively, i.e. in advance of the year in which imports occur, rather than retroactively.

Specified Versus Unspecified Imports

The current version of the MRR would require power to be reported as specified when the importer is a 'Generation Providing Entity' (GPE) or has a written power contract to procure electricity. WPTF appreciates staff's attempt to further clarify the definitions and operational provisions

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

related to specification of imports with proposed modifications, but we believe that there are still a number of problems remaining in the text, as follows:

- The definition of GPE is overly restrictive and would prohibit some legitimate claims to specified power. Additionally, the definition does not, but should, include asset-controlling suppliers.
- More clarity is needed with respect to conditions under which a written power contract entitles an electric power entity to claim electricity from a specified source. The revised definition of “power contract” is not sufficient, as it applies to both specified and non-specified procurement. A new, separate definition for ‘specified power contract’ should be added, and reflected in appropriate provisions throughout the text.
- The definition of specified source suggests that generation facilities and units themselves are deemed eligible to be a specified resource, when in fact it is an electric power entity’s *claim* to a particular specified source that may be deemed eligible or not.
- The revised definition of unspecified source no longer provides assurance that an importer will not get assigned a specified emission factor for power that was purchased as unspecified, but is later identified on an e-tag as a high-emission source. Entities whose transactions do not specify a resource should not be assigned a resource-specific emission rate retroactively.

Provisions Related to Renewable Imports

The cap and trade regulation provides for a Renewable Portfolio Standard (RPS) adjustment for imports of renewable power that is not directly delivered on the condition that “the RECs associated with the electricity claimed for the RPS adjustment must be used to comply with California RPS requirements during the same year in which the RPS is claimed.” This requirement has been interpreted and elaborated in the MRR as requiring an entity that wishes to claim the RPS adjustment to retire the associated REC in the same calendar year in which the REC was generated and apply it toward its RPS procurement target in the same year. Both of these elements of the MRR are inconsistent with the compliance flexibility provisions in the RPS program, which include multi-year compliance periods, a three year ‘active’ shelf life for RECs, and banking of active RECs across compliance periods.

Per conversations with staff, we understand that the requirements regarding REC retirement in the MRR associated with RPS adjustment are intended to prevent resale of RECs associated with the RPS adjustment. WPTF considers this risk to be exceedingly low given the rules of the California RPS and the premium value that ‘category 2’² RECs will have relative to unbundled, category 3 RECs and the stringency of California’s RPS targets relative to other state RPS programs.

If ARB staff believe that provisions are necessary to ensure that electricity claimed under the RPS adjustment is in fact used for California RPS compliance under category 2, WPTF suggest that this

² Public Utility Code § 399.16(b)(2) allows for renewable energy and associated RECS procured in conjunction with firming and shaping energy to be used for compliance with RPS targets. This type of renewable electricity procurement is referred to by the California Public Utilities Commission as Renewable Portfolio Content Category 2. Unbundled RECs that are purchased without associated energy are referred to as category 3.

could be achieved by requiring reporting of additional information regarding RPS adjustments, rather than by requiring REC retirement. Specifically, we recommend that importers claiming the RPS adjustment be required to report the identity of the retail provider procuring the power and serial numbers of associated RECs, and that the procuring retail provider be required to submit an attestation that the electricity will be used for category 2 compliance. Additionally, if CARB retains reporting on REC retirement status within the reporting tool, the tool must be modified to ensure that reporting of associated RECs as 'not retired' does not prevent use of the RPS adjustment.

A second problem with the RPS adjustment relates to a newly proposed modification that would restrict use of the RPS adjustment to retail providers. As many stakeholders have noted, marketers often procure and import bundled RECs and firming and shaping energy on behalf of California retail providers. Rather than limit the use of the RPS adjustment to retail providers, the MRR should instead limit it to electricity that is used by retail providers to comply with the RPS.

Guidance on Appropriate Emission Rate

WPTF anticipates that even with clear definition and rules for assigning emissions to electricity imports, there will be electric power entities with unusual situations that are not clearly addressed in the MRR. It is therefore important that ARB provide a mechanism by which an entity can get a formal, up-front determination of the correct emission factor to be used for an anticipated import transaction. This up-front determination process should result in a formal record for the entity concerned, but should not be subject to public disclosure.

Additionally, WPTF encourages ARB to provide greater transparency on how emission factors for specified sources that have not previously been specified, will be calculated. While the MRR provides general information on how ARB will calculate emission factors, the data sources to be used (i.e. U.S. Environmental Protection Agency versus Energy Information Agency) and emissions included in the calculation are not clear for many generation types (e.g. cogeneration, biomass). ARB should therefore develop and publish examples of how emission factors will be calculated, so that electric power entities may accurately account for these in their transactions.

Verification of Imports

The MRR provides no clear mechanism for verifying that all importers of electricity have reported to ARB. While third-party verification will help ensure accuracy of reported information, it will not assist ARB in ensuring that all importers report. As a result, electric power entities could avoid obligations under the cap and trade program by simply not reporting. WPTF has previously suggested that ARB contract with Open Access Technology Information (OATI) to provide independent data on the quantity of importers to California and the entity responsible. If this is not possible due to OATI confidentiality restrictions, then ARB should collect this data annually from the California Independent System Operator and other California balancing area authorities.

Use of an Emission Factor Different Than That Required by the MRR

During the May 30th workshop, and in the Final Statement of Reason on the MRR released last year, ARB staff suggested that in certain situations an electric power entity should report specified

imports using an emission factor different (i.e. higher) than the specified emission rate for that source in order to avoid the potential that the import would be considered to engaging in resource-shuffling. WPTF has reviewed the MRR and reporting table closely, and sees nothing that would suggest that use of an emission factor other than that specified is required by the MRR. Further, because the operational provision for reporting of specified sources uses mandatory language (“The electric power entity *must* report all direct delivery of electricity as from a specified source...”), use of a different emission rate would be appear to be in violation of the MRR.

If ARB expects an entity to use an emission rate higher than the corresponding specified emission rate for specified imports, than it must clearly provide for this in the MRR itself and indicate the circumstances under which this should be done.

Detailed Comments and recommended textual changes

Definitions (Section 95102)

Generation providing entity: The definition of GPE has a number of problems. First, the use of the term ‘prevailing rights to claim electricity from the specified source’ implies that only one entity may claim imports from a particular generation source. The explanation provided by staff is that this term is needed to determine which entity has the right to claim a source in the event that claims exceed actual facility generation. Documentation of contract terms and settlement provided by entities claiming a particular source should be sufficient to accurately apportion a facility’s output to specific claimants, without the need to negate any individual entity’s claim.

Second, the definition suggests that in cases where a facility operates under tolling agreements to more than one electricity importer, only one may claim the facility. Just as multiple entities may have a proportional ownership of a facilities output, so too could two or more entities have tolling arrangements with the same facility.

Finally, the definition does not explicitly address the case where an ACS is the importer. Since an ACS recognized by ARB as an ACS will not hold a contract for its own facilities, the only condition under which it can specify its imports is if it is recognized as a GPE.

To address these issues, WPTF recommends that ARB replace the current definition of GPE with the following:

(182)Generation providing entity” or ‘GPE’ means an electric power entity that is recognized by ARB as having the right to claim electricity as from a specified source due to that entity being the facility or generating unit operator, full or partial owner of the facility or unit, party to a contract for a fixed percentage of net generation from the facility or generating unit, party to a tolling agreement with the owner, exclusive marketer of power from the facility or generating unit, or an Asset Controlling Supplier of generating facilities;

Specified power contract: The MRR currently contains a definition of “power contract” that refers to documenting specified versus unspecified source of electricity. The use of the same term in the definition and provisions for claiming specified electricity thus provides no clarity as to what

conditions would make a contract eligible for claiming specified imports. Explanations from ARB staff suggest that there is an expectation that a power contract must be unit specific, but this is not explicitly articulated anywhere in the MRR. To eliminate any confusion, WPTF recommends that ARB add a new definition of 'specified power contract' to the MRR and use this term in provisions explicitly related to specified imports:

"Specified power contract" means a power contract that is contingent upon delivery of power from a particular facility or unit, or asset-controlling supplier's system.

Specified source

WPTF recommends modifying the definition of specified source to clarify the distinction between registering a source, and claiming/reporting a source as specified. WPTF also considers that highlighting cogeneration systems is unnecessary.

(364) "Specified source of electricity" or "specified source" means a facility, ~~or unit or asset-controlling supplier's system~~ that ~~that is permitted to be claimed as the source of electricity delivered.~~ has been registered with ARB and assigned a specified emission rate for purposes of calculating GHG emissions associated with electricity imports. Delivered electricity must be reported as from a specified source for facilities or units for which the reporting entity is a generation providing entity or for which they have a specified power contract. ~~Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by the ARB.~~

Unspecified source: Currently, much of the power sold within the area of the Western Electricity Coordinating Council, including on the Intercontinental Exchange, is not differentiated by source, but only by price, quantity and point of delivery. While the source of power may ultimately be identifiable via the NERC tag or in the resultant bilateral contract, the purchasing entity usually does not know the source of the power at the time a purchase offer is made. In these cases, it would be patently unfair to hold the purchaser responsible for an emission rate higher than the default if the power turns out to be sourced from a high-emission facility. Similarly, the lucky bidder who happens to end up with power sourced from a low-emission source should not be able to claim that power as specified.

While WPTF's proposed definition of specified contract would partially address this concern, we recommend that the definition of unspecified power also be modified to explicitly apply to power that is not specified at the time the power transaction occurs. This would ensure that power currently sold on ICE as bulk, system power could not be reported as specified power, but would always be assigned the default emission rate for unspecified power. In the event that a market for specified power develops on ICE or other exchanges, the fact that the power is offered as specified would enable the buyer/importer of that power to claim the appropriate emission rate.

WPTF recommends that modifying the definition of unspecified source as follows:

(399) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is procured and delivered without limitation to a specific source at the time of transaction. ~~not a specified source~~

General Requirements for Electric Power Entities (Section 95111)

Section 95111 (a)(4) Imported Electricity from Specified Facilities or Units. WPTF recommends that the requirements for reporting of specified sources be modified as follows to incorporate reference to 'specified power contract':

Imported Electricity from Specified Facilities or Units. The electric power entity must report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity (GPE) or for which they have a specified power contract. ~~have a written power contract to procure electricity.~~ When reporting imported electricity from specified facilities or units, the electric power entity must disaggregate electricity deliveries and associated GHG emissions by facility or unit and by first point of receipt, as applicable. The reporting entity must also report total GHG emissions and MWh from specified sources and the sum of emissions from specified sources explicitly listed as not covered pursuant to section 95852.2 of the cap-and-trade regulation.

Section 95111 (a)(f) Imported Electricity Supplied by Asset-Controlling Supplier. WPTF recommends that these requirements be modified to provide for importing of electricity by either an ACS itself (which would be considered a GPE) or by an entity that holds a specified power contract for ACS-sourced power:

Imported Electricity Supplied by Asset-Controlling Supplier: The reporting entity must separately report imported electricity supplied by asset-controlling suppliers recognized by ARB when it is the asset controlling supplier or when it has a specified power contract for electricity from an asset controlling supplier's system. The asset controlling supplier must be identified on the NERC e-tags as the PSE at the first point of receipt, regardless of whether the reporting entity and asset-controlling supplier are adjacent in the market path.

Section 95111(b)(5) Calculation of Covered Emissions

WPTF recommends that the provisions related to the calculation of emissions for the RPS adjustment be modified to allow the RPS adjustment to be claimed by any electricity importer, provided that the electricity is used by a retail provider for RPS compliance:

$CO_2e_{RPS\ adjust} =$ Sum of CO_2 equivalent mass emissions adjustment is calculated using the following equation for electricity generated by each eligible renewable energy resource located outside the state of California and registered with ARB by the reporting entity pursuant to section 95111(g)(1), but not directly delivered as defined pursuant to section 95102(a). Electricity included in the RPS adjustment must meet the requirements pursuant to section 95852(b)(4) of the cap and trade regulation. The RPS Adjustment may only be claimed for electricity that is used by Retail Providers where adjustments are used to comply with the California RPS.

The reporting of RPS adjustments shall include information for CAP and Trade accounting purposes, as well as information for GHG inventory reporting. The status of RECs shall be reported as retired or not retired. The retirement status of a REC shall not affect the right of an electric power entity to claim the RPS Adjustment. RECs not retired are assumed to have been banked for future use.

Section 95111 (f) Requirements for Asset-Controlling Suppliers

Section 95111(b)(3) anticipates that the calculation of the emission rate for asset-controlling suppliers will account for that entity's wholesale power purchases. However, information on wholesale power purchases is not included under the current information requirements in section 95111(f). WPTF considers that this information would be important accurately calculating the system emission factor, and for monitoring any changes in an ACS's behavior over time. We therefore suggest that this be made explicit

WPTF also suggests that 'written power contract' be replaced with 'specified power contract'.

(1) Meet the requirements in this article, including reporting pursuant to section 95112 section as applicable for each generating facility or unit in the supplier's fleet, as well as those under ~~written~~ specified power contract;

(5) To apply for and maintain ACS status, the entity shall submit a Statement of Eligibility including the following information, annually:

- (A) General Business Information including entity name and contact information;
- (B) List of Officer Names and Titles;
- (C) Statement of eligibility per section 95102(a)(17);
- (D) Data requirements per section 95111(b)(3);
- (E) List and description of electricity generating facilities under ownership or control;
- (F) Volume of electricity purchased in the previous year;
- (G) Authorized Officer Signature under penalty of perjury.

Section 95111(g) Requirements for Claims of Specified Source of Electricity for Eligible Renewable Energy Resources in the RPS Adjustment

WPTF recommends a number of changes to this section in order to make it consistent with the definition of specified source, to improve clarity, and to ensure that the RPS adjustment is used only for renewable energy that is used under 'category 2' of the RPS.

Specified Sources. Each Reporting entity claiming specified sources ~~facilities or units~~ for imported or exported electricity must register its anticipated specified sources with ARB pursuant to subsection 95111(g)(1) and by February 1 following each data year to obtain associated emission factors calculated by ARB for use in the June 1 filings. Each reporting entity claiming specified sources ~~facilities or units~~ for imported or exported electricity must also meet requirements pursuant to subsections 95111(g)(2)-(5) in the emissions data report.

RPS Adjustment. Each reporting entity claiming an RPS adjustment, as defined in section 95111(b)(5), pursuant to section 95852(b)(4) of the cap-and-trade regulation must include registration information for the eligible renewable energy resources pursuant to subsection 95111(g)(1) in the emissions data report. Prior registration and subsections 95111(g)(2-5) do not apply to RPS adjustments. ~~Registration information and the amount of electricity claimed in the RPS adjustment must be fully reconciled and corrections must be certified within 45 days following the emissions data report due date.~~

(1) *Registration Information of Specified Sources and Eligible Renewable Energy Resources in the RPS Adjustment.* The following information is required:

- (A) The facility names, and for specification to the unit level, the facility and unit names

- (B) For sources with a previously assigned ARB identification number, the ARB facility or unit identification number or supplier number published on ARB's mandatory reporting program website. For newly specified sources, ARB will assign a unique identification number.
- (C) If applicable, the facility and unit identification numbers as used for reporting to the U.S. EPA Acid Rain Program, U.S. EPA pursuant to 40 CFR Part 98, U.S. Energy Information Administration, Federal Energy Regulatory Commission's PURPA Qualifying Facility program, California Energy Commission and California Independent System Operator, as applicable.
- (D) The physical address of each facility, including jurisdiction
- (E) ~~Provide~~ Names of facility owner and operator
- (F) If the importer is a GPE:
 - i. The percent ownership share, where applicable, and whether the facility or unit is under the electricity importer's operational control
 - ii. Total facility or unit gross and net nameplate capacity when the electricity importer; ~~is a GPE.~~
 - iii. Total facility or unit gross and net generation when the electricity importer ~~is a GPE.~~
 - iv. Start date of commercial operation and, when applicable, date of repowering.
 - v. GPEs claiming additional capacity at an existing facility must include the implementation date, the expected increase in net generation (MWh), and a description of the actions taken to increase capacity.
- (G) If the importer is claiming the RPS adjustment,
 - i. Identification of the California Retail Provider on whose behalf the electricity is imported
 - ii. An attestation by that Retail Provider that it will retire the RECs associated with the electricity for compliance with the California Renewable Program Requirements as portfolio content category described in Public Utility Code § 399.16(b)(2).
- (H) Designate whether the facility or unit is a newly specified source, a continuing specified source, or was a specified source in the previous report year that will not be specified in the current report year.
- (I) Provide the primary technology or fuel type as listed below:

...

(3) Delivery Tracking Conditions Required for Specified Electricity Imports

Electricity importers may claim a specified source when the electricity delivery meets any of the criteria for direct delivery of electricity defined in section 95102(a), and one of the following sets of conditions:

- (A) The electricity importer is a GPE for the facilities or units ; or
- (B) The electricity importer has a specified written power contract for the facilities or units.